

BOARD OF APPEALS CASE NO. 5145

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BEFORE THE

APPLICANTS: Kimberly & James Lewis

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to allow a kennel
in the Agricultural District; 2200 Channel Road,
Pylesville**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 10/24/01 & 10/31/01

HEARING DATE: December 5, 2001

Record: 10/25/01 & 11/2/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Kimberly A. Lewis and James Lewis, are requesting a special exception, pursuant to Section 267-53H(3) of the Harford County Code, for a kennel in an Agricultural District.

The subject parcel is located at 2200 Channel Road, Pylesville, Maryland 21132 and is more particularly identified on Tax Map 2, Grid 3F, Parcel 9. The subject parcel consists of 98.88± acres, is zoned AG/Agricultural and is entirely within the Fourth Election District.

Ms. Kimberly Lewis appeared and testified that she and her husband own the subject property and she is the Applicant herein. She and her husband operate a hunting service on the property that utilizes dogs to locate game for paying clients. Ms. Lewis indicated that most hunts last a half day and require 2 to 5 dogs to adequately service the clientele. During hot weather it is common to use 5 dogs for a hunt. Because the hunts are for one-half day and they are handling two hunts per day, the five (5) dogs they currently use are getting very tired due to overuse. The Applicants propose keeping up to 15 dogs trained as hunters. These dogs would all be over 6 months old and there will likely be a litter in the kennel in addition to the mature dogs. The kennel is an enclosed building with concrete runs outside. The dogs are generally pointers and other bird dogs and will pose no threat to neighboring properties. All of the dogs would be owned by the Applicants and trained specifically to be used in the hunting business operated on the property.

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The witness did not believe there would be any adverse impact to neighboring properties. The parcel is in the Agricultural Preservation District and use of the land as a hunting preserve is a permitted use. The witness concluded by reiterating that this is not a proposal for a commercial kennel, but rather, a proposal to house a sufficient number of dogs to be used to operate the permitted hunting preserve.

The Department of Planning and Zoning, in its Staff Report dated June 11, 2001, examined each provision of the Guides, Limitations and Standards set forth in Code Section 267-9I which the Hearing Examiner adopts verbatim as the following findings of fact:

Section 267-91:

(1) The number of persons living or working in the immediate area.

This area of the County is comprised mostly of large active farms. The area is sparsely populated, and most of the residential lots in the area were created prior to 1977. The improvements are located 500± feet back from the road and sit in a grove of trees in a valley backing up to a ridge. The Applicants are only proposing to increase the number of their personal dogs from 5 to 10. These dogs are used in the hunting preserve business on the farm.

(2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

Channel Road is a paved County maintained road with good sight distance in the area of the driveway entrance. For the most part the services offered by the Applicant are limited to the hunting seasons. The increase in personally owned dogs by the owner will not adversely impact traffic.

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- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

Kennels are a permitted use in the Agricultural District as special exceptions with Board approval. While the Applicant is requesting approval for a kennel, they are not planning to operate a commercial kennel. The applicants only wish to keep up to 10 dogs for use on the farm property. The property is a 98+ acre farm that is under an Agricultural Easement. The farm property is used in part as a hunting preserve. The dogs are trained to hunt birds and small animals and used in the business.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The additional dogs requested should not have an adverse impact on the surrounding properties regarding the items listed in this section.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

Police protection will be provided by the County's local Sheriff's Department and the Maryland State Police. Fire Protection will primarily be from the Norrisville and Jarrettsville Volunteer Fire Departments. Water and sewer is provided the properties existing well and septic system. The Applicants will continue to use the present method of trash removal.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposal is recognized by the Code as a use that is compatible with other uses in the Agricultural District, provided certain requirements can be met. The Applicants proposal meets the requirements for the special exception.

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- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

Not applicable to the request.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposed use is in compliance with the Harford County Land Use Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

There are no environmental features that will be impacted by this request

- (10) *The preservation of cultural and historic landmarks.*

Not applicable to the request.

In conclusion, the Department of Planning and Zoning recommended approval of the request subject to several conditions.

People's Counsel appeared and cross-examined the witnesses however, no persons appeared in opposition to the request. People's Counsel proffered that the request was generally acceptable provided certain conditions of approval were imposed and Applicant agreed to those conditions that the Hearing Examiner has set forth below.

CONCLUSION:

The Applicants, are requesting a special exception, pursuant to Section 267-53H(3) of the Harford County Code, for a kennel in an Agricultural District.

Harford County Code Section 267-53H(3) provides:

“Kennels. These uses may be granted in the AG, VB, B1 and B2 Districts, provided that all buildings for the shelter of animals and all runways shall be located at least two hundred feet from any lot line.”

The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

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The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

The Hearing Examiner concludes that the requested special exception at this location will have no greater impacts associated therewith than any other kennel despite its location within the zone. In fact, because of the limited number of dogs, their personal ownership and the size of the parcel, this kennel is likely to have fewer impacts associated with it than other commercial kennels commonly found in Harford County.

The Hearing Examiner recommends approval subject to the following conditions:

1. The Applicant obtains any and all necessary permits and inspections.
2. The kennel be enclosed with connected outdoor runs and concrete flooring.
3. That the number of adult dogs (over the age of 6 months) be limited to 15, all of which shall be owned by the applicants. One litter of immature dogs may also be housed on the property.
4. No pit bulls shall be allowed on the property at any time.
5. No bathing, grooming or overnight kenneling shall be available to the public.
6. The Applicants shall own all dogs kenneled on the property.
7. The kennel is for the personal use of these Applicants and is not transferable.

Date: DECEMBER 17, 2001

William F. Casey
Zoning Hearing Examiner